# No. 92-1499

IN THE

# Supreme Court of the United States

October Term, 1992

PUT-IN-BAY ISLAND TAXING
DISTRICT AUTHORITY,
*Petitioner,*

vs.

COLONIAL, INC.,
*Respondent.*

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## RULE 29.1 STATEMENT

There is no parent or subsidiary company to be listed.

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

## I. STATEMENT OF THE CASE

Petitioner seeks review of the Ohio Supreme Court's decision in *Put-in-Bay Island Taxing District Authority v. Colonial, Inc.*, 65 Ohio St. 3d 449 (1992), rendered on December 11, 1992. In that case the Ohio Supreme Court decided that Ohio Revised Code §5739.101-109 (hereinafter the "island district excise tax statute" or "statute") violated Article II, §26 of the Ohio Constitution. This provision of the Ohio Constitution requires that laws of a general nature operate uniformly throughout the state.

The island district excise tax statute was state legislation that granted only a few select Ohio municipalities, those contained on islands without bridges, the privilege of imposing an excise tax on vendors. The Ohio Supreme Court held that the statute was unconstitutional because it was a law of a general nature that did not operate uniformly throughout the state in contravention of Article II, §26 of the Ohio Constitution.

The Ohio Supreme Court's decision was based solely on state constitutional grounds. The petitioner never presented any federal question at any stage of the state court proceedings and no federal question was decided by the Ohio Supreme Court.

## II. SUMMARY OF REASONS FOR DENYING THE WRIT

There is no jurisdictional basis for granting a writ of certiorari. The decision petitioner seeks to have reviewed is a *state* court decision holding a *state* statute unconstitutional under the *state* constitution. The petitioner never presented a federal question to the state court. Nor did the state court decide any federal question or rest its decision on any federal ground. Furthermore, petitioner fails to present any legitimate federal question in this petition. The petition for writ of certiorari has no merit and should be denied.

## III. REASONS FOR DENYING THE WRIT

### A. The United States Supreme Court Lacks Jurisdiction to Review the Ohio Supreme Court's Decision in This Case.

There are no facts in this case to support a finding of U.S. Supreme Court jurisdiction. The U.S. Supreme Court does not have the power to review a state court decision that does not involve a federal question. *See* 28 U.S.C. §1257(a).[1] The issue presented to the Ohio Supreme Court was the validity of a state statute under the state constitution. The Ohio Supreme Court's decision rested solely on state constitutional grounds. State courts speak with finality on questions of state law. *See, e.g., Henry v. Mississippi,* 379 U.S. 443, 446-47 (1965); *Murdock v. City of Memphis,* 20 Wall. 590, 22 L. Ed. 429 (1875). This Court has no power to review the Ohio Supreme Court's decision in this case.

This Court also may not review federal questions that were not first presented to the state court whose decision is the subject of a petition for certiorari. *See, e.g., Webb v. Webb,* 451 U.S. 493, 495-97 (1981); 28 U.S.C. §1257(a). The petitioner presented no federal questions to the Ohio Supreme Court in this case and none were decided.

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[1] None of the statutes cited by petitioner in its statement regarding jurisdiction provide a basis for the assertion of jurisdiction in this case. Petitioner cites 28 U.S.C. §§1254(1), 1257, and 2101(c). Section 1254(1) involves only appeals from U.S. Courts of Appeal. Section 2101 does not provide a basis for jurisdiction but simply sets forth the time in which a petition for certiorari must be filed. Finally, Section 1257(a) provides only for the review of state court decisions involving federal questions.

Petitioner has also failed to comply with Supreme Court Rule 14(h) regarding petitions for review of state court decisions. This rule requires a petitioner seeking review of a state court decision to specify in his petition:

> the stage of the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised, the method and manner of raising them and the way in which they were passed upon by those courts and such pertinent quotations of specific portions of the record or summary . . . as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

Petitioner has not provided the Court with any of this required information. That petitioner has failed to provide such information is not surprising since petitioner never presented *any* federal question at *any* stage of the state court proceedings.

For all of the above reasons, it is clear that this Court lacks jurisdiction to review this case.

**B. Petitioner has Presented no Legitimate Federal Question to This Court.**

Although petitioner phrases its "questions presented" in terms of federal equal protection issues, no such questions have ever been raised in this case. Nor is there any merit to the questions presented in the petition. Petitioner's attempt to fashion a federal claim out of a state constitutional question simply has no basis in either law or fact.

Petitioner essentially claims that its federal constitutional rights were violated by the Ohio Supreme Court's invalidation of a state statute on state constitutional grounds. Petitioner evidently claims that it has a federal constitutional right to special state legislation that is prohibited by the state constitution. This argument is ludicrous.

Petitioner cites no authority in support of its petition because there is none. No federal constitutional provision or federal law mandates the enactment of or sanctions the validity of the island district excise tax statute. The equal protection clause does not give island municipalities the right to a state law giving them local taxing privileges that other municipalities do not have. In fact, political subdivisions such as municipalities are not even "persons" entitled to equal protection under the 14th Amendment. *See, e.g., City of Newark v. New Jersey*, 262 U.S. 192, 196 (1923); *Williams v. Mayor*, 289 U.S. 36, 40 (1933); *South Macomb Disposal Authority v. Washington Twp.*, 790 F.2d 500, 505 (6th Cir. 1986).

The petition fails to present a meritorious federal question, much less one that has ever been raised before in this litigation. It is clear from petitioner's discussion of reasons for granting certiorari that petitioner is asking this Court to review the reasonableness of a state court's interpretation of its own constitution. This Court has no jurisdiction to do this.

## IV. CONCLUSION

For all of the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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